

***Fiqh al-Muwatanah* (Fiqh of Citizenship): A New and Inclusive Islamic Approach for Multi-religious Societies**

By **Maszlee Malik** (PhD, Research Fellow)

Executive Summary

- The modern context of a nation-state is incompatible with the classical legalistic framework that classifies countries into *Darul Islam* (abode of Islam) and *Darul Harb* (abode of war)

Similarly, contemporary Islamic jurists who have holistically examined Islamic legal rulings
- are led to the conclusion that many previous practices of Muslim political institutions are no longer suitable for modern times
- Nationality today is no longer confined to a person's religion only, but by their citizenship and loyalty to the geographic sovereignty they live under as well. Most contemporary Muslim scholars now agree that non-Muslims residing in Muslim-majority countries share a citizenship status similar to that of Muslims
- This new understanding can be termed the *Muwatanah*, based on the *Sahifah Madinah* (Constitution of Medina) document initiated by Prophet Muhammad. The *Sahifah Madinah* acknowledged the rights and responsibilities of all citizens of the city of Madinah regardless of their different faiths
- In order to replace the discourse of classical demarcation between Muslims and non-Muslims with a new and progressive one, local Muslim scholars are urged to produce popular literature dealing with the issue. This is to counteract any re-introduction of the ancient discourse into Malaysian reality under the pretext of imposing Islamic obligations upon all Muslims

***Fiqh al-Muwatanah* (Fiqh of Citizenship): A New and Inclusive Islamic Approach for Multi-religious Societies**

By **Maslee Malik** (PhD, Research Fellow)

Introduction

On June 23, 2016, the Mufti of Pahang shocked Malaysians with a statement declaring it a sin for Muslims to support the Democratic Action Party (DAP). The political party was labelled *Kafir Harbi* for its opposition to the implementation of *hudud* law in Malaysia (Utusan Malaysia, June 24, 2016).

His proclamation provoked an outcry and was rightfully criticised by the mass public; several police reports were lodged against him and many demanded that he retracted his statement. The Mufti however, maintained that his comments were not contradictory to Islamic teachings and thus, refused to acquiesce. He clarified that he was not referring to DAP and its anti-*hudud* ideology alone, but also to those who opposed Islam as well. He equally denied claims that he was instigating hostility between Muslims and non-Muslims.

Interestingly, the Mufti's statement found support among some local Muslim preachers and religious figures (Malik, 2016). But many were puzzled by his use of *Kafir Harbi*, in particular its meaning in the political context and its implication in a multi-religious and multicultural society like Malaysia.

To understand *Kafir Harbi*, one needs to understand the term's origins and the worldview that comes with it. Only through analysing its historical context can one comprehend the purpose of the term's usage by classical Muslim jurists (*fuqaha*) in their writing, and why it was used as a framework to define relations between Muslims and non-Muslims at the local and international levels.

This paper will examine the term and its usage lest its misuse be taken out of context in the contemporary political reality of Malaysia. A new framework for Muslims to redefine their epistemological position with regard to Muslims and non-Muslims co-existing as citizens with equal rights and responsibilities will be proposed under the paradigm of what is known widely in contemporary Islamic discourse as *Fiqh al-Muwatanah*, or the Fiqh of Citizenship.

Getting to the Root of the Issue

Long before the territorial borders of today's countries were drawn, the world was demarcated by Muslim scholars into *Darul Islam* (abode of Islam) and *Darul Harb* (abode of war or abode of infidels). This politically-driven binary was established at a time when Islam was striving to make

its mark among existing civilisations and when the waging of war was much more the order of the day than in modern times.

In addition to this rudimentary division of territories, supplementary definitions were also given for non-Muslims. Non-Muslims living outside of Muslim countries were known as *Kafir Harbi*.¹ Those under Muslim protection in exchange for a special tax were called *Dhimmi*. Citizens of non-Muslim countries who maintained peaceful relations with the *Darul Islam* were *Mu'ahad*, and non-Muslims who sought temporary protection in Muslim lands were *Musta'man*. This process was dynamic, as a *Kafir Musta'man* could subsequently become a *Dhimmi* if he were to pay *jizyah*, the aforementioned special tax (al-Qaradawi, 2009).

As pointed out by the late Syekh Muhammad Abu Zahrah, a prominent al-Azhar University scholar (1995), most works and discourses dealing with politics, statehood, and international relations by current traditionalist Islamic jurists (*fuqaha*) are mainly referenced from the classical literature of Fiqh and thoughts written down by past Muslim scholars. And needless to say, these texts were predominantly influenced by the political circumstances and contextual issues of the period in which the authors lived in.

In his book *al-'Alaqaat al-Duwaliyyah fi al-Islam* (International Relations According to Islamic Point of View), he provided a new Islamic approach to the relation between nations by representing them in a new dimension different from what was previously discussed by classical scholars.

He critiqued the demarcation of the world's countries into *Darul Islam* and *Darul Harb* which is still famously accepted by many contemporary Muslim jurists. According to him, the term *Darul Harb* as defined by the reasoning (*ijtihad*) of past ulama was in accordance with the conventional world (or what is known as '*urf*' in Islamic jurisprudence) of their period, most notably during the revelation of the Quran, when the norm of international community relations centred on power struggles, warfare, conquests and expansions.

In his book, Syekh Muhammad Abu Zahrah seeks to provide a new aspect to the issue in line with international conventions of the modern period. He explains that it is difficult for non-Muslim states to be declared *Darul Harb*. He also proposes the elimination of the term *Kafir Harbi* (infidels) for non-Muslims residing in non-Muslim-majority states, with the exception of any power that openly declares war on Islam and Muslims (Abu Zahrah, 1995:58).

¹ The Arabic term '*kafir*' is derived from the root word '*kafara*', which means 'to have obscured'. In a technical context, this is the term accorded to someone whom the undistorted message of Islam has been conveyed, yet he rejects it unconditionally. The word '*harbi*' is a descriptor form of the word '*harb*', which means 'war'. In classical Islamic texts, the amalgamation of these two terms is '*kafir harbi*', which refers to 'non-Muslims or infidels with whom war can be waged'. Such were the hues and colors which painted the landscape of classical Islamic texts as defined by Muslim jurists since the early writings of Muhammad bin Hasan al-Shaibani (749/50 – 805 AD) and Imam al-Awza'ie (707–774 AD), and the term refers to persons or groups that can be legitimately killed due to their hostility and aggression against the Islamic state or community albeit only under clear indications and during which strict ethics are to be observed (Abu Zahrah, 1995; al-Zuhayli, 2000).

To him, this new meaning has a basis in evidence related to *jihad*, attitudes of Muslims toward their enemies, the issue of *wala* (loyalty) of Muslim citizens toward their society and the land they inhabit. It is also based on the sovereignty of Muslim lands inflicted by warfare, and which became the *illah* or reason for the law. Hence, when the *illah* (underlying cause) for a particular law disappears, then the law itself becomes invalid – in Arabic, this is: *al-'illah yaduru ma'al hukmi wujudan wa 'adaman*.

Sheikh Muhammad Abu Zahrah opines that *illah* for warfare as the foundation for relationships between states or religions that existed in the past now ceases to exist because relationships between the world's countries today are focused on the principle of peace, acknowledging each other's right to exist, and the need to avoid warfare post-World War II (Abu Zahrah, 1995: 58-60). Although conflicts and minor wars do still occur, they are generally frowned upon – their motives differ from the past, when wars occurred as a basic condition of power, religion and state relations.

On the issue of *jizyah*, Dr Jaser Audah asserted that the majority of laws established by classical scholars relating to politics was based on the context of their period. Therefore, it is important to understand the historical context that led to the establishment of these laws so that a literal approach is not taken when applying past *ijtihad* (intellectual reasoning) to a time that is essentially different in context and environment (Audah, 2012: 118).

Based on this premise, contemporary ulama and modern Islamic thinkers have revised the issue of citizenship (*muwatanah*). The classical division of inhabitants in Muslim-majority countries is no longer into the headings of Muslims, *Kafir Dhimmi*, *Kafir Mu'ahad*, and *Kafir Musta'man* (al-Qaradawi, 2009: 911-12). Additionally, the classical Fiqh's general and symbolic division of countries into *Darul Harb* and *Darul Islam* would also be changed if this division is reconfigured.

***Ahl Dhimmah* in Modern Times: An Assessment**

The ulama and Muslim thinkers of today are striving to build a new landscape for international relations and citizenship status within the new reality of nation-states, which is the basic framework for modern countries.

Non-Muslim citizens in a Muslim-majority country are no longer seen as second-class citizens, nor are they citizens as a result of warfare or territorial expansions as was previously the case. Instead, they are now embraced as members of the state, and their citizenship status is equal to that of Muslims. This forms the basis of *'urf dawli* or the global convention of all modern countries now determined by nation-statehood and by constitutionalism.

Unlike the past when one's nationality was based on religion, today, citizenship hinges on a person's loyalty to the geographic sovereignty they live under. Every individual that becomes a citizen of a modern country possesses equal rights and responsibilities, unless the particular

country's constitution accords special privileges or protection to certain groups of people, for example, the indigenous communities.

To be sure, this concept was in fact already a source of inspiration and guidance for the *Sahifah Madinah* (Constitution of Medina/Charter)² that acknowledged and accepted the citizenship of all in Yathrib or Madinah. It was unambiguously addressed in the Charter and indicated unequivocal acknowledgement of the Jewish tribes in Madinah as part of the *ummah* (the community) alongside the Muslims (al-Wa'iy, 1996: 49; Imarah, 2005: 176-77). As recorded by Ibn Ishaq, the treaty was promulgated as a major reference to govern the social structure and to define the social contract for the people of Madinah. This was a clear indication that the Jews of the city, for example, should be given aid and equality and they should not be oppressed, nor should aid be given to their enemies (Guillaume, 2007: 233).

The most colourful and pertinent model for this ideal was the *La Convivencia* during the period of Islamic Spain. The spirit of mutual respect and recognition of non-Muslims as citizens of the state during that period not only facilitated the flourishing of the Islamic intellectual realm, but assisted in the progression of Christian and Jewish intellectual and cultural environments as well (Pagden, 2008: 153-54).

Despite numerous factual confirmations of abuses and bitter incidents concerning such relations in the past, historical evidences within the abode of Islam (*Dar al-Islam*) nevertheless points to mutual acknowledgement and co-existence as the undisputed precepts of the *Shariah* (Ramadan, 2001: 104-18).

The method developed by classical Islamic jurists (*fuqaha*) pertaining to the *Ahl Dhimmah* (non-Muslims living in an Islamic state and given legal protection), *Lahum ma lana, wa 'alayhim ma 'alayna* (all the rights that we enjoy should also be enjoyed by them, and all the responsibilities we have, are also their responsibilities) became the foundation for the *Fiqh al-Muwatanah* concept.

However, the question was raised about the *Ahl Dhimmah's* position in the past where they were seen as second-class citizens who were tied to the payment of *jizyah* (tax to be paid by non-Muslims residing in Muslim lands) as a form of protection. Is this ruling and law still used within the framework of *Fiqh al-Muwatanah*? From a holistic understanding of the *Fiqh*, many contemporary Islamic jurists are of the view that the imposition of *jizyah* is no longer to be levied upon non-Muslim citizens (Audah, 2012: 115-20).

² Peaceful co-existence and harmonious cohesion with other religious communities have been well documented in Islamic history since the Prophet began his call to Islam in Makkah and unfolded one of the greatest political documents in human history, the *Sahifah Madinah* or the Constitution of Medina (622 AD). As the pioneer social contract document in Muslim history (Imarah, 2005: 173; Hamidullah, 2006: 42-64), the treatise embraced 20 major principles including Unity, Diversity, Conduct, Fighting Injustice, Search or Striving for Peace, Freedom of Religion and the Rule of Law.

Several reasons were given:

- i) Non-Muslim citizens have the same duties and responsibilities to pay taxes and defend the nation from foreign invasions just as much as Muslims do;
- ii) The modern context of a nation-state does not bring with it the *Darul Islam* legal framework of the past. Classical Islamic jurists lived during a turbulent period when the payment of *jizyah* was compulsory; this influenced the legal discourse of the time; and
- iii) Contemporary jurists have also stated that the nation-states that exist today on Muslim-majority lands were created and established together with the help of non-Muslims. The latter fought alongside the Muslims in resisting colonial rule and for the independence of their homelands. Collectively, they have managed to achieve sovereignty for the lands they reside in (al-Ewa, 1998: 74).

In addition, Dr Yusuf al-Qaradawi proposed that certain archaic terms such as *Dhimmah* and *Ahl Dhimmah* be erased from contemporary dictionaries as they are no longer relevant. The present-day situation and context vastly differs from the past and hence, these terms have become obsolete and are no longer accepted by the non-Muslims who live alongside their fellow Muslims. Moreover, within the framework of the "modern nation-state" it is expected that the non-Muslim population enjoy citizenry status similar to other groups within the same state.

In support of his view, Al-Qaradawi drew attention to the policy of Caliph Umar ibn al-Khattab r.a. who agreed to the request of the Taghlib tribe's Christians for the term *jizyah* to be replaced with *sadaqah*. (Al-Qaradawiy, Yusuf, 2010:40-42).

The *Dhimmi* status was last used by Muslims during the Ottoman Caliphate in the nineteenth century. Commenting on the issue, Mohammad Talaat al-Ghunaimi stated that: "When Sultan Abdel Majid issued the Khatti-Sherif of Gulhane in 1839, proclaiming the principle of equality between the Muslims and the Christians, the classical legal status of the dhimmis, presumably, was to disappear." (al-Ghunaimi, 1968:213).

However, there are still those among the Islamic jurists who practice the classic fatwa (ruling) that makes *jizyah* compulsory and view non-Muslims in Muslim-majority countries as *Ahl Dhimmah*. Such fatwas however, remain ineffective due to the imposition of constraints and restrictions by the present-day political system. For the traditional and conservative *fuqaha*, the current state of relations between Muslims and non-Muslims is that of a forced necessity and cannot be recognised as a new *ijtihad*.

In the following, this paper introduces the current *ijtihad* of contemporary *fuqaha* and Muslim thinkers with regards to *Fiqh al-Muwatanah*, more specifically its developments, from its origins to the present day.

Muslim Scholars and the *Fiqh al-Muwatanah*

The issue of Muslim and non-Muslim citizenship as well as nationality in Muslim-majority states were already discussed by Muslim reformists and ulama in the nineteenth century and early twentieth century.

Rif'at al-Tahtawi, the Egyptian Azhari ulama, who was sent by Muhammad Ali Pasha to France with the Egyptian army, was the first scholar to introduce the concept of *al-Watan* (Nation) and *al-Muwatanah* (Citizenship) in his work *Hubb al-Awtan* (Love for the Nation). This was later added upon by the Tunisian reformist Hayrudin Pasha or Khayrudin al-Tunisi in his work *al-Wataniyyah wa al-Din* (Nationalism and Religion). However, both addressed the dimensions of the nation-state and looked toward nationalism or Arab nationalism as inspired by the post-revolution French nationality concept (Abu al-Majd, 2010: 56-85).

At the end of the nineteenth and in the early twentieth century, the *Salafiyyah* (not *Wahabiyyah*) reformist group attempted to analyse these issues through the philosophy of Islamic law, and took the *ummah* and the spirit of Islam into account.

The most notable *Salafiyyah* interlocutors on the issues included: Syeikh Jamaludin al-Afghani (died 1897) in his *al-Jami'ah al-Islamiyyah* (Pan-Islamism) work, Syeikh Muhammad Abduh (died 1905) in *al-Muwatanah al-Misriyyah* (The Egyptian Citizenship), Abdul Rahman al-Kawakibi (died 1902) in *al-Din wa al-Watan* (Religion and Nationalism), Syeikh Rashid Redha (died 1935) in his *Bayna al-Jami'ah al-Islamiyyah wa al-'Asabiyyah al-Jinsiyyah* (Between Pan-Islamism and Ethnic Racism), Syeikh 'Alal al-Fasi (died 1974) in his *al-Muwatanah: al-syu'ur wa Taklif* (Citizenship: Emotion and Responsibility), and lastly, Abdul Hamid Ben Badis (died 1940) in his *al-Wataniyyah al-Islamiyyah* (The Islamic Citizenship) (See: Abu al-Majd, 2010: 109-31).

Reformists and Islamic jurists who were either from Ottoman-influenced lands or states conquered by the West still viewed the *Muwatanah* (citizenship) issue from a *Fiqh* (Islamic legalistic) framework based on the Caliphate protectorate and not under the nation-state framework.

Modern Islamic jurists and thinkers of Muslim-majority states however have different views on the *Fiqh al-Muwatanah* concept, including Dr Fahmi Huweydi from Egypt. His book *Muwatinun la Dhimmiyun* (Huweydi, 1990) became a source of reference for later discussions on the abovementioned issue. His boldness and courage in bringing new *ijtihad* was later built upon by Dr Tariq al-Bishri (also from Egypt) in his work *al-Jam'ah wa al-Muwatanah* (Unity and Citizenship), Dr Muhammad Imarah in his *al-Musawah Haqqun Ilahiyun* (Equality is a Guaranteed Right from God), Dr Muhammad Fathi Uthman in his *al-Muwatanah al-Kamilah* (The Full Citizenship), Prof. Muhammad Salem al-Ewwa in his *al-Muwatanah Laysat 'Iswaiyyah* (Citizenship and Not Discrimination), Tunisian Ennahdha Party leader, Dr Rached Ghannouchi in his magnum opus, which was also his PhD thesis, *al-Hurriyat al-'ammah* (The Public Freedom in Islam) ((Ghannouchi, 1993), Prof. Tariq Ramadan in his book, *Islam, the West and the Challenges*

of Modernity, and also Dr Yusuf al-Qaradawi in his *Muwatanah Ghayr al-Muslimin* (Citizenship of non-Muslims) (Abu al-Majd, 2010: 147-167).

We can see that even though Fahmi Huweydi introduced the term *al-Muwatanah*; to be fair, the first figure among the contemporary ulama that attempted to introduce *ijtihad* on the Fiqh related to citizenship was Syeikh Muhammad al-Ghazali (died 1996). Dr Yusuf al-Qaradawi was his student and Qaradawi made references to his teacher in his paper *Lahum ma lana, wa 'alayhim ma 'alayna*.

However, Ghannouchi is credited for providing comprehensive meaning to *Muwatanah* within the framework of value-based democracy and Islamic principles. He redefined the issue of *Fiqh al-Muwatanah* by taking inspiration from the *Sahifah Madinah* which recognised the rights and responsibilities of all citizens be they Muslims, Yathrib inhabitants, Jews or Arabic idols (al-Ghannouchi, 2012: 182 -87).

According to the Charter, all inhabitants of Madinah pledging to defend the land's sovereignty from enemy attacks were considered *Ahl al-Madinah* or citizens of Madinah. Additionally, non-Muslims at the time were not labelled *Dhimmi* or *Mu'ahad* (non-Muslims from *kuffar* lands that had a peace treaty with Muslim lands). The division of *Dhimmi* and Muslims only came after the waging of wars between Muslim and non-Muslim states following the expansion of new Muslim territories (al-Ewa, 1998: 74). Ghannouchi also emphasised the issue of *karamah insaniah* (human dignity), justice, freedom and equality in relation to *Fiqh al-Muwatanah*. Inspired by the *Maqasid al-Shariah's* more comprehensive description by Tunisia's leading Maqasid cleric, Sheikh Tahir bin Ashur, Ghannouchi understood that the *Fiqh al-Muwatanah* was aimed at the realisation of the *Maqasid al-Shariah*, especially in relation to the abovementioned principles (Zulkifli Hasan, 2013). Aside from his writings, the actions and decisions that have been and are being taken by the Ennahdha Party after the 2010 Jasmine Revolution, reflects a comprehensive understanding of the *Muwatanah* concept (Maszlee Malik, 2014).

In Malaysia, Datuk Dr Siddiq Fadzil of Institut Darul Ehsan (IDE), and former president of Angkatan Belia Islam Malaysia (ABIM) and Wadah Pencerdasan Ummah Malaysia (WADAH), is among the intellectual figures that often discuss issues of *Fiqh al-Muwatanah* and provide substantive meaning to the Fiqh based on the country's socio-political framework.

However, further research efforts should be conducted to create better and more precise understanding of *Fiqh al-Muwatanah* at the level of the *asatizah* (religious teachers) and among members of the Islamic movements in the country, and to allow flexibility for the *Shariah* of Islam to be applied in all situations and places. This is to avoid creating an illusion of a utopian society returning to classical rulings without looking at the *illah* (underlying cause or philosophy) of the law and the higher objectives to be achieved through Islamic laws (*Maqasid al-Shariah*).

The *Fiqh al-Muwatanah* and Lessons from the *Sahifah Madinah*

In Ghannouchi's discussion on democracy and human rights from the Islamic perspective, he deliberated on the lessons and knowledge modern Muslims can gain from the *Sahifah Madinah*. Also known as the *Dustur Madinah* by some modern scholars, the *Sahifah Madinah* is the first political document produced by the Prophet in his first year of *hijrah* with the *Muhajirin* to Madinah.

For Hamidullah (2006), the Charter is the first national constitutional document in the history of human civilisation that embodies the characteristics of a modern constitution. In any case, the existence of the *Sahifah Madinah* preceded the Magna Carta, glorified by the West as the first document in the history of Western civilisation seeking to limit the power of the government and to reach a mutual understanding between the people and the political authority.

But while the Magna Carta was honoured and praised – it celebrated its 800th anniversary in 2015—, the *Sahifah Madinah* was overlooked. The Magna Carta was merely an agreement between the Barons and King John of England with regards to the Barons' privileges. This included protection from illegal imprisonment, taxation and the right to choose a church they religiously identified with and not be subjected to the King's church.

Unlike the Magna Carta, the *Sahifah Madinah* is a document outlining the basis of a city-state in particular, detailing the general rights of the people, their responsibilities, the sovereignty of the city of Madinah, the rule of law, the recognition of the pluralism of society and religion, and other matters relating to citizenship and the law.

Interestingly, the emergence of the Magna Carta came after a tragedy and was the result of efforts to curb tyranny and the abuse of power by a potentially dictatorial king who may have wanted to rule with an iron fist – this is where the value of the Magna Carta lies. The *Sahifah Madinah* however, was a mutual understanding and an agreement among all parties involved. The emergence of the *Sahifah Madinah* was not the result of fierce conflict, rather it started out as a hope that collectively, the inhabitants could build a civilised city-state based on the rule of law.

Principles from the *Sahifah Madinah*

According to Ghannouchi (2012: 182-86), among the principles understood from the *Sahifah Madinah* are:

- 1) Affirmation of the concept of *ummah*. Muslims from among the *Muhajirin* from Makkah who may be within the framework of the nation-state today were referred to as immigrants, while the indigenous people of Madinah, the *Ansar*, were considered as part of the *ummah*, an *ummah* with one creed. This can be seen in Article 2 of the *Sahifah Madinah*. The non-Muslims among the Jewish tribes who became citizens of Madinah were also

regarded as part of the *ummah* along with the *Muhajirin* and *Ansar* within the framework of "citizens" (Article 24).

- 2) The state of Madinah was an open state (*Dawlah Maftuhah*). Citizens were accepted under the condition that they lived together in Madinah and defended its other citizens. This is evident in Article 1 of the Charter: "This is a document from the Prophet Muhammad between the Believers and Muslims from Quraish and the inhabitants of Yathrib (Madinah) and anyone who accompanies them and strives (in defending the city of Madinah) with them." Furthermore, Muslims living outside of Madinah were also regarded as its citizens based on their allegiance to jointly defend the city as mentioned in the Quran in Chapter al-Anfal (8) verse 72.
- 3) Recognition of the pluralistic reality of a collective society. This is evident when each party from the Yathrib and *Muhajirin* tribes were individually mentioned in the 47 articles contained in the *Sahifah Madinah* (nine Muslim parties and 11 non-Muslim parties). Recognition was also given to the *Musyrik* (non-Muslims) who had their own religions as contained in Article 20. What was required however, was that they pledged their allegiance to defend Madinah from enemy attacks.
- 4) Recognition of religious and group differences. Today, this is called freedom of religion and freedom of belonging or identification to a group. However, the fundamental point of reference and source of laws was Islam. This is clearly stated in Article 23: "And for what you dispute in something, then the reference is to Allah and Muhammad."
- 5) Citizenship and loyalty were the basis of the rights and responsibilities of every citizen of Madinah. It was for this loyalty to the state that the non-Muslims were embraced as citizens of Madinah as mentioned in Article 24.
- 6) Recognition of local conventions or '*urfs*' (customs and practices) that were not contrary to Islamic principles. This is evident when each party was allowed to maintain the rules and customs of their culture in matters pertaining to their own communal affairs mentioned in the Charter as '*Rab'ah*' (local cultural practices). Hence, in the 47 articles relating to the different groups, the Charter guaranteed their freedom to practice '*Rab'ah*' in their groups so long as it did not strip others of their rights and did not violate Islamic principles.
- 7) The appointment of the head of state as the basis of a constitution. This was in line with the assertion in the *Sahifah Madinah* that Prophet Muhammad was the reference for the people of Madinah should conflicts arise (Article 42).
- 8) The affirmation that the Quran and *Sunnah* were the sources of legal jurisprudence and laws related to the state (Articles 23 and 42).
- 9) Recognition of equal status for all citizens of Madinah, be they Muslims or non-Muslims, indigenous or migrants, Arabs or non-Arabs (other races, '*Ajam*'). Based on this concept of

equality, mistreated persons must be helped and be given aid regardless of their blood ties or religions. Article 44 reads: "And indeed (obliged) to provide assistance to those who are oppressed."

- 10) The obligation to defend Madinah was the responsibility of its citizens. The enemy of Madinah was the enemy of its citizens, regardless of family or ethnic affiliations as stated in Article 44: "And (obligations) to help their fellow (against) those who attacked Yathrib (Madinah)."
- 11) Prohibition on cooperating with the enemies of the state (Madinah), especially the *Musyrikin* of Makkah. This is mentioned in Article 17: "And shall not establish a partnership or cooperation with the Quraish or those that help them."
- 12) Diplomatic relations and cooperation with outsiders were state affairs and could not be done arbitrarily or freely by certain groups of citizens of Madinah. This imposition was aimed at reminding the tribes who had agreed to become its citizens to respect the principles of statehood, and not practice excessive tribalism or clannism. All diplomatic and political relations must go through the head of state, i.e. Prophet Muhammad SAW as mentioned in Article 17.
- 13) The *Sahifah Madinah* also stressed community-oriented concepts with emphasis on neighbourhood relations as stated in Article 40: "*Neighbours are like life*"; the principle of cooperation and mutual help in Article 12, and many more.
- 14) Enforcement of criminal law in order to ensure lawfulness as set out in Article 37.
- 15) The guarantee of freedom of movement within and outside of Madinah for every citizen and visitor (Article 47).

Analysis of the Contents of the *Sahifah Madinah*

In analysing the contents of the *Sahifah Madinah*, Ghannouchi (2012: 187) conducted some critical evaluations of his own. He highlighted some questions related to the Charter based on the views and understanding of modern politics.

Among his comments are:

- 1) The Charter is a brief document relating to the city-state and does not provide a comprehensive discussion of state concepts that one would find in any modern state constitution established on the principle of the sovereign nation. However, the document was produced more than 1,400 years ago and is unique to its time.

It also established a new form of civilised communal living based on the concepts of social contract and constitutional supremacy. While some may refer to the Charter as a "constitution", the important fact is that the present-day definition of "constitution" has undergone centuries of historical development prompted by a series of global tragedies and bloody conflicts.

The Charter was a blueprint for state life which was somewhat unfamiliar not just to Arab culture of the time, but to the socio-political world at large. During a time when the world's political system was dominated by tyranny, monarchy, and the royal caste system, the Charter not only expressed citizen empowerment, but also the idea of a country's administration being based on the rule of law, and not individuals, families or the elite.

- 2) The Charter however, does not mention the concept of *Shura* (mutual consultation between rulers and the people) which is the main principle of Islamic political practice and thought. Hence, the matter needs to be addressed more inclusively.

Firstly, the concept of people empowerment and the tribes' consensus on the contents of the Charter are in themselves the essence of *Shuratic* practice. Secondly, the Islamic *Shariah* was revealed gradually, not all at once. The Charter is not the Quran. The statements found in the Quran and made by the Prophet Muhammad as the main source of reference for the country imply that what the Prophet brought was part of the essence manifested in the Charter. The practice of *Shura* by the Prophet reflects that meaning. Nonetheless, the Charter is just one example of a state document and is not an absolute reference, though it should be seen as one of the *ijtihad siyasi* (political reasoning) by the Messenger of Allah, and there are lessons to be learned from its limitations.

- 3) Not all principles related to Islamic politics are mentioned in the Charter. As a result, the *Sahifah Madinah* simply cannot be used as the sole argument and guidance in understanding state politics according to Islam. It is important that the Prophet's entire participation in governance be taken into account, based on the framework of *Maqasid al-Shariah* (Objectives of the *Shariah*). This is maintained by Ibn Qayyim al-Jawziyah (1996) in his book *al-Turuq al-Hukmiyyah*. He said of *al-Siyasah al-'adilah* (fair politics): "Surely the Islamic *Shariah* is fundamentally built based on all goodness for humanity in this world and in the hereafter. Islamic law is full of justice, virtue, and wisdom. So, everything that escapes from justice to injustice, from grace to disgrace, from goodness to corruption, from wisdom to ignorance is therefore not the Islamic *Shariah* nor should it be interpreted as such."
- 4) The Charter states clearly the citizenship status (*al-muwatanah al-kamilah*) of the Jewish community. As citizens of the state of Madinah, their rights and responsibilities are equal to that of Muslims. These were reflected in the expression *li al-Yahud dinuhum wa li al-Muslimin dinuhum* (the Jews with their religion, and the Believers with their religion). This means the constitution guarantees freedom of religion and believers of various faiths are free to practice and maintain their religions and religious identities.

As for the equal distribution of responsibilities, it is reflected in the expression *wa anna al-Yahuda yunfiquna ma'a al-Mu'minin madamu muharibin* (the Jewish community and the Believers alike must both finance and take part in defending Madinah if it is attacked). The same rights and responsibilities are also given to the Arab tribes who became its citizens as well. It is this equality of citizenship rights and obligations between Muslims and non-Muslims that is ingrained in the principle of *lahum ma lana, wa` alayhim ma `alayna* (they deserve to get what we get, and bear the responsibilities that we bear).

- 5) What is important for Ghannouchi (2012: 187) are the implications that the Charter brought forth, such as the celebration of racial, cultural, and religious diversity within a state (communal living). He cited the example of how citizens in Madinah shared equal duties and responsibilities in developing the city-state – a principle integral to the nation-building process. This has become the basis for Muslim community life throughout history, and Ghannouchi stated that this should act as a guide for the Muslims of today living in a pluralistic society – the basis of *Fiqh al-Muwatanah*.

Malaysian Reality and the *Fiqh al-Muwatanah*

Recent political developments in Malaysia show the emergence of an awareness of common ideals and aspirations that extend beyond racial and religious boundaries to achieve universal goals. Various peoples began to unite to fight for humanitarian values, justice, democracy and integrity. This is championed as part of larger uncompromising collective interests devoid of apologetics, and has become a starting point for the formation of a new and more nuanced Malaysian political landscape.

The commitment of Islamists is required to embed this principle within a new framework. Unity and harmony are the major pillars that need to be maintained to ensure that Islamic *da'wah* (Islamic missionary work, or propagation) continues to be relevant and to permeate every societal discourse. Failure to nurture understanding, tolerance, and political maturity among the people will be detrimental to nation-building processes.

The term "citizen" or "people of the Malay Archipelago" was established a century ago. Home to diverse communities, the peninsula's geographical location in the middle of the Malay Archipelago, and at the centre of maritime trade between East and West made it a focal point for Muslim sailors. Cultural exchanges took a more permanent form when various ethnicities from East and West, from the Indian subcontinent, the Arabian Peninsula, and from Mainland China, started settling there.

Colonisation, however, interrupted this universal sharing process. The Portuguese's agenda for the eradication of Islam was followed by the divide-and-rule policy of the British administration. The cultural exchanges and integration of the races in the region soon changed and began taking on another form. The processes imposed by the colonial powers damaged the dynamics of interaction between the peoples of different races, cultures and religions.

To exploit Malaya's natural resources, the British brought in Chinese and Indians labourers and the indigenous Malays were left out from the fiscal and economic developments. World War II made matters worse when the Japanese openly oppressed the Chinese community while simultaneously empowering the Malays, sparking racial aggression and tension. The British later returned and proposed a formula that further marginalised the Malay community by granting equal rights and citizenship to the Chinese and Indians migrants, whose loyalty was still to their respective countries.

To protest the Malayan Union, the idea of a Federation was dreamed up. It is noteworthy that the period saw an increase of armed communists throughout South and South-East Asia. The rise of armed communists in the Malay Peninsula was naturally perceived as a threat and an attempt to control the Malay political landscape. Tunku Abdul Rahman succeeded in garnering the cooperation and collaboration of both the Chinese and Indian communities through power-sharing to offset the radical communist influence. This power-sharing approach catered to race-based politics and was termed the "social contract" that constituted the basis for the British agreement to grant independence to the Malay states.

It was not however, an easy process. The British's divide-and-rule policy had fuelled complications to nation-building processes, making national integration post-independence very fragile indeed. Soon, interracial relations shifted to focus on political accommodations and compromise, but the legacy of colonial occupation still influenced political discourses, making inter-ethnic relationships susceptible to bargaining between races (Siddiq Fadzil, 2012). Despite calls to form a nation based on plurality, race-based politics unfortunately remains subconsciously etched into the framework of racial relations.

Dr Burhanuddin al-Helmy formulated the national ideology of a people unified within the Federation of Malaya (pre-Malaysia) into five "national spirit principles":

- i. Belief in God (*Ketuhanan Yang Maha Esa*);
- ii. Nationality (*Kebangsaan*);
- iii. Sovereignty of the People (*Kedaulatan Rakyat*);
- iv. Universal Brotherhood (*Persaudaraan Sejagat*); and
- v. Social Justice (*Keadilan Masyarakat*) (Kamaruddin Jaffar, 1980:113-121).

Many members and supporters of the Islamic movement now feel it is time to reinvigorate the campaign for a more inclusive Islam in Malaysia. However, this should be within the framework of the Fiqh based on a new and fresher *ijtihad* driven by the *Maqasid al-Shariah*. This is in line with what Ghannouchi previously stressed (1993: 43): the space of *ijtihad* is wide enough for Muslims to produce new opinions and deliberations guided by the *Maqasid al-Shariah*. He considered the political issues to be in a vacuum (*faraghaat*) left by the *Shariah* so that people could be creative in guarding the general interests of the public. The *ijtihad* requires contemporary input to celebrate locality, age, *zeitgeist* (spirit of the time), and cultural and human differences.

As previously mentioned in the *Fiqh al-Muwatanah* framework, all citizens have equal rights, be they Muslims or not. But equal rights also come with equal responsibilities. If the rights obtained are different, then it is because of individual requirements such as physical abilities, socio-economic status, and geographical factors. However, the advantages possessed or given should not mean that the rights of other citizens should be taken away. Every citizen deserves the right to education, economic activities, health, and politics, which are equally based on government policies. This is in line with the spirit of the *Sahifah Madinah* which reads: "For them the rights like the rights of the Muslims and over them the responsibilities like the responsibilities of the Muslims."

In order to ensure social equilibrium and harmony, the Islamic political framework must ensure that equal rights are given to all citizens. This principle also requires respecting the supremacy and sovereignty of the rule of law by not distinguishing between different classes of people in society (Naqvi, 1994).

Equally important, every citizen, Muslims or otherwise, must defend the state from external and internal threats. While external threats involve foreign enemies, internal threats encompass elements that interfere with national security and social harmony including crime, extreme racism, terrorism, corruption, abuse of power, theft, subversion, and many more.

Muslims do not need to compromise on faith issues in order for Malaysia to achieve national unity or social harmony.

Conclusion

The main pillars of *Fiqh al-Muwatanah* include the willingness of all parties to respect diversity of views in a plural society. Community development and views based on *Fiqh al-Muwatanah* should depend on a formula for unity in diversity. A positive mindset is imperative to the acceptance of racial, religious and cultural diversity; ethnic and religious heterogeneity should not be seen as a source of conflict and dispute, but rather as an asset of strength, wealth, creativity, and development dynamics.

In fact, diversity in unity is natural and is consistent and compatible with the *sunnatullah* (the way of God, or rules of the universe). This theme is addressed by Dr Muhammad Imarah in his book *al-Islam wa al-Ta`addudiyyah: al-Ikhtilaf wa al-Tanawwu` fi Itar al-Wihdah* (Islam and Pluralism: Differences and Diversity in the Framework of Unity) (Imarah, 2011). Everything that we see in nature and life emanates the essence of diversity in unity: the Creator's oneness with the diversity of His creatures; the unity of humanity with the diversity of race, colour and language; the unity of God's religion with its diversity of laws; the unity of the *Shariah* with the diversity of *Fiqh* and its intellectual reasonings and opinions (*ijtihad*).

Furthermore, Dr Siddiq Fadzil said that the concept of *Fiqh al-Muwatanah* applied in Malaysia should aim to ensure that every citizen tries to achieve the goals of the *Rukun Negara* (National

Principles or Philosophy) which aims to “achieve a stronger unity among the whole society, preserve a democratic way of life, create a just society where national prosperity will be shared fairly and equally,... ” (Siddiq Fadzil, 2012). The *Rukun Negara* according to him is a vital step towards building an integrated Malaysian citizen, as well as a declaration that coincides with the *Fiqh al-Muwatanah* concept and is parallel with the *Maqasid al-Shariah* framework (author's addition).

For example, the appreciation and application of the *Rukun Negara*'s principle of “Faith to God” should be able to manifest a religious and civilised people whose aspects of life – be it political, economic or social – are faith-based. As for the principle of “Loyalty to the Ruler and the State”, this should build a unified nation that is under the auspices of the King (in the sense of *al-Imam al-'adil*, or a just leader), and that is just and welfare-oriented. The supremacy of the Constitution and the Supreme Rule of Law should enable society to build a disciplined nation that upholds and observes the rule of law. Moreover, the principle of “Decency and Morality” should build a people that is ethical, noble and possessing of mutual respect and love.

Likewise, introducing Malaysian Muslims to the notion of Islam in the realm of politics as a set of value and ethical-based principles rather than a dogmatic ideology helps them revisit their initial position towards the issue of citizenship. Ghannouchi (1993, 1993b, 2001, 2012) and Sa'ededin Uthmani's (2009) versions of the separation between religion and politics would be helpful too; as both had Islamic epistemology as their point of departure. Both thinkers offered a more realistic role of Islam as a set of values for Muslims to embrace the modern political principles of justice, freedom, accountability, people empowerment, good governance and democracy. Both emphasised the realisation of the highest objectives of *Shariah* in the political realm, which for them is a neutral space; rather than a vision to bring classical and archaic institutions of the past into present-day reality.

Thus, it is timely for local Muslim scholars to produce popular writings dealing with the issue and replacing the classical demarcation between Muslims and non-Muslims with a new and progressive one. The acknowledgement of the legitimacy and *Shariah*-compliance of modern states by Muslim scholars is of the utmost importance, not only for Malaysians, but also for Muslims living in non-Muslim-majority states in South-East Asia and other Western countries. Classical discourses on the political relation between Muslims and non-Muslims such as the demarcation of non-Muslims living within a Muslim-majority country and their labels of *Kafir Dhimmi* and *Kafir Harbi* are very counter-productive in the set-up of constitutional-based modern state.

References

- Abu Zahrah, Muhammad (1995). *Al-'Alaqat al-Duwalayah fi al-Islam*. Madinat Nasr: Dar al-Fikr al-Arabi.
- Abu al-Majd, Abdul Jalil (2010). *Mafhum al-Muwatanah fi al-Fikr al-'Arabi al-Islami*. Cassablanca: Ifriqiya al-Sharq.

Al-Ewa, Muhammad Salem (1998). *Al-Fiqh al-Islamiyy fi Tariq al-Tajdid*. Amman: al-Maktab al-Islami.

Dr Yusuf al-Qaradawi, *Fiqh al-Jihad*, Cairo: Dar Wahbah, 2009

Al-Wa'iy, Tawfiq (1996). *al-Dawlah al-Islamiyyah Bayna al-Turath wa al-Mu'asarah* (Islamic State, Between the Classical Interpretation and Contemporary Reality). Beirut: Dar Ibn Hazm.

Dr Wahbah al-Zuhayli, *al-'Alaaqat al-Duwaliyyah fi al-Islam*, Dar al-Maktabiy, 2000

Audah, Jaser (2012). *Bayna al-Shari'ah wa al-Siyasah*. Beirut: Arab Network for Research and Publishing.

Ghannouchi, Rashid (1993). *Al-Hurriyat al-'Ammah fil-Dawlah al-Islamiyah* (Public Liberties in the Islamic State). Beirut: Arab Unity Studies Center. 43.

Al-Ghannouchi, Rached (1993b). "The Participation of Islamists in a Non-Islamic Government", in Azzam Tamimi, *Power-Sharing Islam?*, London: Liberty for Muslim World Publication. 1993b, pp. 51-64

Al-Ghannouchi, Rached. "On the Dilemma of the Islamic Movement: A Political Party or a Reformist Organization?", in AbdelWahab el-Affendi (ed.), *Rethinking Islam and Modernity (Essays in Honour of Fathi Osman)*. Leicester: The Islamic Foundation, 2001

Al-Ghannouchi, Rashid (2012). *Al-Dimuqratiyah wa al-Huquq al-Insaan fi al-Islam*. Doha: Markaz al-Jazeera li al-Dirasaat (Aljazeera Centre for Studies).

Guillaume, A (2007). *The Life of Muhammad (a Translation of Ibn Ishaq's Sirat rasul Allah)*. New York: Oxford University Press.

Hamidullah, Muhammadi (2006). *The Prophet's Establishing a State and His Successions*. New Delhi: Adam Publishers & distributions.

Huweydi, F. (1990). *al-Muwatinun la Dhimiyyun: Mawqi'Ghayr al-Muslimin fi Mujtama'Muslimin* (Citizens, not Dhimmia: Position of Non-Muslims in Muslim (Majority) Community). Cairo: Dar al-Shuruq.

Ibn al-Qayyim, Muhammad bin Abu Bakar (1973). *I'laam al-Muwaqi'in 'an Rabb al-'Alamin* (Guidance for the Mujtahid Scholars). Beirut: Matba'ah Beyrut.

Imarah, Muhammad (2005). *Al-Islam wa Huquq al-Insaan* (Islam and Human Rights). Damascus: Dar al-Salaam.

Imarah, Muhammad (2011). *al-Islam wa al-Ta'addudiyyah: al-Ikhtilaf wa al-Tanawwu' fi Itar al-Wihdah*. Kaherah: Dar al-Salaam.

Kamaruddin Jaffar (1980). *Burhanudin al-Helmi*. Kuala Lumpur: Institut Kajian Dasar.

Maszlee Malik (2014). 'An Interview with Dr Rashid Ghannoushi', *Kulliyah Research Bulletin*, Kuala Lumpur: KIRKHS, IIUM. vol. 5, num. 2, hal. 1-3.

Naqvi, Syed Nawab Haider (2003). *Perspectives on Morality and Human Well Being a Contribution to Islamic Economics*. Leicester: The Islamic Foundation. 151

Pagden, Anthony (2008). *Worlds at War: The 2,500-Year Struggle between East & West*. New York: Oxford University Press.

Ramadan, Tariq (2001). *Islam, the West and the Challenges of Modernity*. Leicester: The Islamic Foundation.

Siddiq Fadzil (2012). *Pembinaan Bangsa: Kepelbagaian Dalam Bingkai Kesatuan*. Kertas Kerja di Muktamar ABIM.

Uthmani, Sa'de al-Din *al-Din wa al-Siyasah: Tamyiz La Fasl* (Religion and Politics, Demarcation not Separation). Cassablanca: al-Markaz al-Thaqafi al-'Arabi, 2009.

Zulkifli Hasan (2013). 'Konsep Negara Madani Menurut Rashid al-Ghannouche', di dalam Zulkifli Hasan (ed.), *Rashid al-Ghannoushi, Intelektual-Reformis Gerakan Islam*, Kuala Lumpur: ABIM.

"Mufti's 'kafir harbi' label seditious", says alarmed Council of Churches, in www.malaysiakini.com/news/347090; "MCA response to Pahang Mufti over Kafir Harbi' statement", english.astroawani.com, 24 July 2016;

"Retract Kafir Harbi Remark, MIC tells Mufti Pahang", *The Star Online*, 26 June 2016.

"DAP Tergolong Kafir Harbi Wajar Ditentang", *Utusan Malaysia*, 24 June 2016.

Managing Editor: Ooi Kee Beng **Editorial Team:** Regina Hoo, Lim Su Lin, Nur Fitriah, Ong Wooi Leng

PENANG
INSTITUTE
making ideas work

10 Brown Road
10350 George Town
Penang, Malaysia

Tel : (604) 228 3306
Web : penanginstitute.org
Email : issues@penanginstitute.org

© Copyright is held by the author or authors of each article.

The responsibility for facts and opinions in this publication rests exclusively with the authors and their interpretations do not necessarily reflect the views or policy of the publisher or its supporters.

No part of this publication may be reproduced in any form without permission.